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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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JUDITH C. MAGNEY,

Plaintiff,

v.

COUNTY OF HUMBOLDT, et al.,

Defendants.

Case No.[17-cv-02389-HSG](#)

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10 ORDER GRANTING DEFENDANTS'
11 MOTIONS TO DISMISS

Re: Dkt. Nos. 31, 32

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Pending before the Court are two motions to dismiss: one filed by the County of Humboldt, Humboldt County Board of Supervisors, and various County employees (“County Defendants”),¹ and the other filed by two employees of Humboldt County Adult Protection Services (“APS Defendants”). *See* Dkt. Nos. 31 (“County Mot.”), 32 (“APS Mot.”). Both motions seek dismissal of the complaint filed by Plaintiff Judith Magney as the successor in interest to her late husband, Dick Magney (“Decedent”). *See* Dkt. No. 1 (“Compl.”) ¶ 42. Plaintiff filed oppositions to both motions, Dkt. Nos. 47 (“County Opp.”), 48 (“APS Opp.”), and the APS and County Defendants (collectively, “Defendants”) separately filed replies, Dkt. Nos. 53 (“County Reply”), 51 (“APS Reply”). Having carefully considered the parties’ arguments, the Court hereby **GRANTS** Defendants’ motions.²

¹ In her complaint, Plaintiff named the following County employees as Defendants: Humboldt County Counsel Jeffrey S. Blanck, Carolyn J. Ruth, Blair Angus, and Natalie A. Duke; Director of Humboldt County Department of Health and Human Services (“DHHS”), Phillip Crandall; Adult Protection Services (“APS”) Public Nurse, Heather F. Ringwald; APS Supervising Nurse, Shirley Hillman; DHHS, Social Services Branch (“SS”) Social Worker Supervisor, Rosy Provino; SS Program Manager, Amanda Winstead; and DHHS Humboldt County Public Guardian, Kelli L. Schwartz. *See* Dkt. No. 1 at 2; *see also* Dkt. No. 1-2 at 3.

² The Court finds this matter appropriate for disposition without oral argument. *See* Civil L.R. 7-1(b).

1 **I. BACKGROUND**

2 This case arises out of allegations regarding Defendants' conduct in (1) securing temporary
3 medical decision making authority for Decedent, and (2) challenging Plaintiff's authority to act as
4 Decedent's agent or surrogate pursuant to his Advanced Health Care Directive ("AHCD") during
5 Decedent's hospitalization in 2015. Specifically, the complaint sets forth the following facts.

6 Plaintiff alleges that, "each and every day from March 13, 2015 through May 6, 2015,"
7 Defendants "conspired to, and did make [] fraudulent evidentiary showings to obtain ex parte
8 orders invalidating" Decedent's AHCD. Compl. ¶¶ 47-48. In so doing, Defendants "purposefully
9 misled" the Humboldt County Superior Court of California in the subsequent legal proceedings.
10 *Id.* Defendants also allegedly aided and abetted each other in violating Decedent's fundamental
11 rights "by subjecting [him] to daily Medical Batteries . . . [and] unwanted medical procedures" in
12 violation of his AHCD during this timeframe. *Id.* ¶ 57. Plaintiff further alleges that, from March
13 13, 2015 through May 22, 2015, Defendants "overtly acted in furtherance of their conspiracy" to
14 violate Decedent's fundamental rights "by meeting, telephoning, emailing, planning[,] and
15 discussing daily how to further their conspiracy . . ." and, from April 6 to May 22, 2015, "by
16 exercising total physical control over his person and total financial control over his finances . . ."
17 *Id.* ¶¶ 58-59. According to Plaintiff, this deprivation of Plaintiff's and Decedent's constitutional
18 rights was the direct result of Defendant County's official policy or custom of countermanaging
19 AHCDs with which it disagrees. *Id.* ¶¶ 64-66.

20 Following the California Superior Court's decision not to award Plaintiff and Decedent
21 attorneys' fees under section 4771(a) of the California Probate Code, *see* Cal. Probate Code §
22 4771(a), Plaintiff appealed.³ *See* Compl., Ex. 1 at 31-53; *see also* *Humboldt Cty. Adult Protective*
23 *Servs. v. Superior Court*, 208 Cal. Rptr. 3d 666, 669 (Ct. App. 2016). Plaintiff attached the
24 California Court of Appeal opinion to her complaint and incorporated it by reference. *Id.*; *see also*
25 Compl. ¶ 55.

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³ Section 4771(a) of the California Probate Code permits a court, in its discretion, to award
28 attorneys' fees to "[t]he agent or surrogate, if the court determines that the proceeding was
 commenced without any reasonable cause."

1 Plaintiff filed the complaint on April 26, 2017. Dkt. No. 1. The complaint sets forth three
2 claims for relief arising under 42 U.S.C. § 1983 against all Defendants, individually and in their
3 official capacities acting under color of state law. The first and third claims allege deprivation of
4 Decedent's and Plaintiff's constitutional rights to liberty and privacy under the Fourteenth
5 Amendment of the United States Constitution, and the second claim alleges conspiracy to violate
6 these constitutional rights. *Id.* ¶¶ 84-107. Plaintiff seeks compensatory and punitive damages, as
7 well as an award of attorneys' fees under 42 U.S.C. § 1988. *Id.* ¶¶ 29-30.

8 Defendants move to dismiss the complaint for failure to state a claim under Federal Rule of
9 Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). Among other arguments, Defendants contend that
10 Plaintiff's section 1983 claims are time-barred. *See* County Mot. at 4-5; APS Mot. at 9-10.

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12 **II. LEGAL STANDARD**

13 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
14 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
15 dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its
16 face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). On a motion to dismiss, the Court
17 accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in
18 the light most favorable to the plaintiff. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
19 1025, 1031 (9th Cir. 2008). But the plaintiff must allege facts sufficient to "raise a right to relief
20 above the speculative level." *Twombly*, 550 U.S. at 555. Although the Court generally is confined
21 to assessing the allegations in the pleadings, when the complaint is accompanied by attached
22 documents, such documents are deemed part of the complaint and may be considered in evaluating
23 the merits of a Rule 12(b)(6) motion. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th
24 Cir. 1987); Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is
25 a part of the pleading for all purposes."). A court "need not accept as true allegations
26 contradicting documents that are referenced in the complaint." *Lazy Y Ranch Ltd. v. Behrens*, 546
27 F.3d 580, 588 (9th Cir. 2008).

28 A statute of limitations defense may be raised by a motion to dismiss "[if] the running of

1 the statute is apparent on the face of the complaint.” *Ledesma v. Jack Stewart Produce, Inc.*, 816
2 F.2d 482, 484 n.1 (9th Cir. 1987); *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir.
3 1980). However, a complaint may not be dismissed unless it appears “beyond doubt” that
4 plaintiffs can prove no set of facts that would establish the timeliness of the claim. *Hernandez v.*
5 *City of El Monte*, 138 F.3d 393, 402 (9th Cir. 1998).

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7 **III. PLAINTIFF’S SECTION 1983 CLAIMS AS PLED ARE TIME-BARRED**

8 Defendants move to dismiss Plaintiff’s claims as barred by the statute of limitations period
9 for section 1983 actions, because they arise from conduct about which Plaintiff “knew or had
10 reason to know” was wrongful that occurred prior to April 26, 2015, more than two years before
11 Plaintiff filed her complaint. County Mot. at 4-5; APS Mot. at 9-10; *see also* Dkt. No. 1.
12 Specifically, Defendants argue that all of Plaintiff’s claims are predicated on documents filed
13 before April 26, 2015, the operative date for statute of limitations purposes. *See* County Mot. at 4-
14 5.⁴ Two of these documents are petitions seeking temporary control over Decedent’s health care
15 decisions, which were filed by certain County Defendants on March 13, 2015. *See* Comp. ¶ 48;
16 RFJN, Exs. A-B. Those petitions were withdrawn on April 2, 2015. *See* RFJN, Exs. C-D. The
17 other documents are petitions for appointment seeking temporary conservatorship and permanent
18 probate conservatorship over Decedent. *See* County Mot. at 6; RFJN, Exs. E-L. These documents
19 were filed on April 3, April 9, and April 22, 2015, respectively, by the Humboldt County Public
20 Guardian, another County Defendant. *See* County Mot. at 6; RFJN, Exs. E, F,G, H. The
21 Humboldt County Superior Court appointed the Public Guardian as temporary conservator of
22 Decedent’s person and estate in letters dating between April 6, 2015 and April 14, 2015. *See*
23 County Mot. at 6, RJFN Exs. I-L.

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25 ⁴ The Court **GRANTS** County Defendant’s request for judicial notice (“RFJN”) to the extent that
26 Defendants seek judicial notice of the existence of these documents. *See* County Mot. at 5-6; Dkt.
27 No. 31-1, Exs. A-L. These documents are part of the public record, and are “not subject to
28 reasonable dispute.” *See* *Mir. v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).
Plaintiff’s opposition to County Defendants’ RFJN does not contest County Defendants’ RFJN to
the extent that the Court takes notice of these documents for their existence. *See* Dkt. No. 48-1 at
4-6. In view of County Defendants’ RFJN, the Court does not rely on APS Defendants’ RFJN.
See Dkt. No. 29. The Court therefore **DENIES AS MOOT** APS Defendants’ RFJN.

1 Plaintiff generally alleges that Defendants' unlawful conduct occurred "each and every
2 day" from approximately March 13, 2015 to May 22, 2015.⁵ Compl. ¶¶ 47-48, 57-59, 64-66. All
3 three of Plaintiff's claims against Defendants are based on her allegation that Defendants made
4 "fraudulent evidentiary showings" to the Humboldt County Superior Court in order to obtain ex
5 parte orders invalidating Decedent's AHCD. *Id.* ¶¶ 48-56.

6 A federal claim "accrues when the plaintiff knows or has reason to know of the injury
7 which is the basis of the action." *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001). Since
8 section 1983 does not on its face contain a limitations period, federal courts "look to the statute of
9 limitations for personal injury actions in the forum state." *Maldonado v. Harris*, 370 F.3d 945,
10 955 (9th Cir. 2004). In California, the statute of limitations for personal injury actions is two
11 years. Cal. Code Civ. Proc. § 335.1. As the above-referenced documents suggest, Plaintiff knew
12 or had reason to know of the injuries underlying her section 1983 claims as pled—at the very
13 latest—by April 22, 2015, the date on which the County Public Guardian filed its most recent
14 appointment petition. *See RFJN, Ex. H.* Based on the two year statute of limitations period, the
15 date by which Plaintiff needed to timely file her complaint was no later than April 22, 2017.
16 Plaintiff filed her complaint on April 26, 2017. Dkt. No. 1. While this difference is only a matter
17 of days, Plaintiff does not specifically allege any other dates that would cast doubt on the above
18 discussed public documents. Those documents, on their face, show that Plaintiff's last cognizable
19 harm under her claimed theory (i.e., the last opportunity for a "fraudulent evidentiary showing" by
20 Defendants) occurred on April 22, 2015. The Court therefore finds that Plaintiff's claims are
21 time-barred as pled and must be dismissed.

22 Plaintiff contends in her oppositions that the continuing violation theory applies to satisfy
23 the statute of limitations for her section 1983 causes of action. *See County Opp. at 9-11; APS*
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25 ⁵ In her first claim for relief, Plaintiff contends that Decedent's constitutional rights were violated
26 by Defendants' actions in taking control of his end of life medical care decisions and in subjecting
27 him to "forced" medical procedures from March 13, 2015 to May 6, 2015. Compl. ¶ 85. And
28 from April 6, 2015 to May 22, 2015, Decedent's rights were further violated by Defendants'
actions in placing him in a nursing facility "against his choices." *Id.* Lastly, from March 13, 2015
to May 22, 2015, Decedent "was unlawfully restricted from exercising his [end of life] choices"
by Defendants' unlawful conduct. *Id.* ¶ 86. Plaintiff's remaining claims for relief are both based
on conduct that Plaintiff alleges to have occurred from March 13, 2015 to May 22, 2015.

1 Opp. at 9-11. For the reasons explained below, the Court finds that Plaintiff's continuing violation
2 theory fails based on the current allegations. The Ninth Circuit has "repeatedly held that a mere
3 continuing impact from past violations is not actionable." *Knox*, 260 F.3d at 1013 (internal
4 quotations omitted). The proper inquiry for determining whether a continuing violation theory
5 applies to a plaintiff's claims is whether the case involves "the delayed, but inevitable,
6 consequence" of the original injury, or an "independently wrongful, discrete act . . . which began
7 the running of the statute of limitations anew." *Pouncil v. Tilton*, 704 F.3d 568, 581 (9th Cir.
8 2012); *see also* County Reply at 3-7; APS Reply at 3-5.

9 Here, Plaintiff's complaint fails to allege that any specific act or conduct occurred within
10 the statute of limitations period. Plaintiff's complaint similarly lacks any facts indicating that
11 Plaintiff suffered a new injury arising out of an "independently wrongful, discrete act" within that
12 timeframe. *See Compl. ¶¶ 42-83*. Because Plaintiff does not specify, in the complaint, any
13 "independently wrongful, discrete act" that occurred after the Public Guardian filed its most recent
14 appointment petition on April 22, 2015, the continuing violation theory does not save her claims
15 from dismissal. Moreover, even if the Court accepts as true Plaintiff's factual allegations as they
16 relate to the dates of Defendants' conduct, she fails to plead those allegations in her complaint
17 with sufficient specificity to survive a dismissal motion. *See Twombly*, 550 U.S. at 555 (holding
18 that a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level").
19 For instance, Plaintiff does not identify particular dates on which any one of the many named
20 Defendants undertook the allegedly unconstitutional actions.⁶

21 The Court therefore concludes that, as the complaint is currently pled, Plaintiff knew or
22 had reason to know of all of Defendants' allegedly unlawful conduct prior to April 26, 2015.
23 Plaintiff's section 1983 claims are therefore untimely and must be dismissed.⁷

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25 ⁶ While Plaintiff references more detailed facts in her oppositions beyond those included in the
26 complaint, the Court cannot consider those facts. *See Schneider v. California Dep't of Corr.*, 151
27 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("In determining the propriety of a Rule 12(b)(6) dismissal, a
court *may not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in
opposition to a defendant's motion to dismiss.") (emphasis in original).

28 ⁷ Because the Court finds that Plaintiff's claims are time-barred, the Court does not address
Defendants' other arguments. The Court notes, however, that any amended complaint must not

1 **IV. LEAVE TO AMEND**

2 Even where dismissal is appropriate under Rule 12(b)(6), a court “should grant leave to
3 amend even if no request to amend the pleading was made, unless it determines that the pleading
4 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130
5 (9th Cir. 2000) (quotation and citation omitted). Because the Court cannot conclude at this stage
6 that Plaintiff could not allege facts sufficient to overcome the defects identified above, the Court
7 grants Plaintiff leave to amend. *See id.* Any first amended complaint must clearly and concisely
8 state the basis for all claims alleged.

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10 **V. CONCLUSION**

11 For the foregoing reasons, the Court **GRANTS** Defendants’ motions to dismiss. Any
12 amended complaint must be filed within 28 days of the date of this Order.

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14 **IT IS SO ORDERED.**

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16 Dated: 3/5/2018

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HAYWOOD S. GILLIAM, JR.
United States District Judge

lump “the Defendants” together generically. Instead, the complaint must allege what *each* Defendant did with enough specificity to enable the Court to determine whether a claim has been stated against each Defendant individually.